



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

US EPA RECORDS CENTER REGION 5



489199

DEC 24 1990

REPLY TO ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Edward M. Walerko
c/o Walerko Tool and Engineering Corp.
1935 W. Lusher Street
Elkhart, Indiana 46517

RE: REQUEST FOR INFORMATION PURSUANT TO SECTION 104(e) OF CERCLA
FOR THE LUSHER STREET SITE IN ELKHART, INDIANA.

Dear Mr. Walerko:

On March 22, 1990, the United States Environmental Protection Agency (U.S. EPA) issued an information request to you pursuant to Section 104 (e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9604, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, and pursuant to Section 3007 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6927. The information request was sent in care of Walerko Tool and Engineering Corp. and was served on Chris Ogar, by certified mail, on March 26, 1990. This information request required you to provide certain documents and information within thirty (30) days of receipt of the letter. When no response from you was received by U.S. EPA, a supplemental information request was sent. This supplemental request was served on Marlene Yoder on May 21, 1990, and required your response to be delivered to U.S. EPA within 10 days, or by May 31, 1990. To date, no response has been received by U.S. EPA.

Enclosed herein is a copy of the original and supplemental information requests to which you are to respond, along with a few additional requests. Please respond within ten (10) days of receipt of this letter.

You may, if you desire, assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 CFR 2.203 (b). Information covered by such a claim will be disclosed by U.S. EPA only to the extent, and only by means of the procedures, provided in 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is received by U.S. EPA, it may be made available to the public by U.S. EPA without further notice to you.

The written statements submitted pursuant to this request must be notarized and submitted under your signature certifying that all information contained therein is true and accurate to the best of your knowledge and belief and that a diligent search for all documents responsive to this request has been completed. All documents submitted to Region V pursuant to this information request should be certified as true and authentic to the best of your knowledge and belief. Should you find, at any time after the submittal of the requested information, that any portion of the submitted information is false, you should notify U.S. EPA promptly. If any answer certified as true should be found to be untrue, you can and may be prosecuted pursuant to 18 U.S.C. Section 1001.

Continued failure to comply with U.S. EPA's information request by responding fully, truthfully, and in a timely fashion to all items requested or to promptly and adequately justify such failure to respond may subject you to an enforcement action seeking to compel compliance and collect penalties of up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000) for each day of noncompliance pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. Section 9604 (e)(5). "Noncompliance" is considered by U.S. EPA to be not only failure to respond to the requests, but also failure to respond completely and truthfully to each request. Please be further advised that provision of false, fictitious, or fraudulent statements or representations may subject you to criminal penalties up to TEN THOUSAND DOLLARS (\$10,000) or up to five (5) years of imprisonment or both under 18 U.S.C. Section 1001.

Your response to this information request should be mailed to:

Elizabeth Murphy
Office of Regional Counsel
U.S. Environmental Protection Agency, 5CS-TUB-7
230 South Dearborn Street
Chicago, Illinois 60604

Please direct any legal questions you may have to Elizabeth Murphy at (312) 886 - 0748. If you have any technical questions contact Ken Theisen at (312) 886 - 1959.

Due to the legal ramifications for failure to respond properly, U.S. EPA strongly encourages you to give this matter your immediate attention and to respond to this information request within the time specified above.

Sincerely yours,



Rodger Field,
Acting Chief, Solid Waste and Emergency Response Branch

bcc: Ken Theisen, OSC (5HS-11)
Don Chilton, CI, CRU (5HS-TUB-7)
Oliver Warnsley, CRU (5HS-TUB-7)

INSTRUCTIONS

1. A separate response must be made to each of the questions set forth in this Information Request.
2. Precede each answer with the number of the Information Request to which it corresponds.
3. In answering each Information Request, identify all contributing sources of information.
4. If information not known or not available to the Respondent as of the date of submission of its response should later become known or available, Respondent must supplement its response to U.S. EPA. Moreover, should the Respondent find, at any time after the submission of its response that any portion of the submitted information is false or misrepresents the truth, respondent must notify U.S. EPA as soon as possible.
5. For each document produced in response to this request for Information, indicate on the document, or in some other reasonable manner, the number of the question to which it responds.
6. You must respond to the Information Request on the basis of all information and documents in your possession, custody or control or in the possession, custody or control of your former or current employees, agents, servants, contractors or attorneys. Furnish such information as is available to you, regardless of whether or not it is based on personal knowledge, and regardless of source.
7. Your response should be accompanied by your notarized affidavit stating that a diligent record search has been completed and that there has been a diligent interviewing process with all present and former employees who may have knowledge of the operations, hazardous substance use, storage, treatment, releases, spills, disposal or handling practices of the Respondent between 1970 and 1989. To the extent that any information you provided relating to these Requests is based on your personal knowledge, or the personal knowledge of your employees, agents, or their representatives, this information shall be in the form of a notarized affidavit.
8. If any documents requested herein have been transferred voluntarily or involuntarily to others or have been otherwise disposed of, identify each such document, identify the person to whom it was transferred, describe the circumstances surrounding such transfer or other disposition, and state the date or approximate date of such transfer or other disposition.

9. The information requested herein must be provided notwithstanding its possible characterization as confidential information or trade secrets. You may, if you desire, assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. 2.203(b). Information covered by such a claim will be disclosed by U.S. EPA only to the extent, and only by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. [See 41 Federal Register 36902 et seq. (September 1, 1976); 43 Federal Register 4000 et seq. (December 18, 1978)]. If no such claim accompanies the information when it is received by U.S. EPA it may be made available to the public by U.S. EPA without further notice to you. You should read carefully the above-cited regulations, together with the standards set forth in Section 104(e)(7) of CERCLA, before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim, as stated in Section 104(e)(7)(ii) of CERCLA.

DEFINITIONS

For the purpose of the Instructions and Requests for Information set forth herein, the following definitions shall apply:

1. The term "you" or "Respondent" shall mean the addressee of the Request.
2. The term "person" as used herein includes, in the plural as well as the singular, any natural person, firm, contractor, unincorporated association, partnership, corporation, trust or governmental entity, unless the context indicates otherwise.
3. The term "property" shall mean the Walerko Tool and Engineering Corporation's place of business, adjacent parking areas and adjacent alleyways, located at 1935 W. Lusher Street in Elkhart, Indiana.
4. The term "hazardous substance" shall have the same definition as that contained in Section 101(14) of CERCLA, including mixtures of hazardous substances with other substances including petroleum products.
5. The term "pollutant" or "contaminant" shall have the same definition as that contained in Section 101(33) of CERCLA.
6. The terms "furnish", "describe", or "indicate" shall mean turning over to U.S. EPA either original or duplicate copies of the requested information in the possession, custody, or control of the Respondent. Where specific information has not been memorialized in any document but is nonetheless responsive to an information request, you must respond to the request with a written response. If such requested information is not in your

possession, custody, or control then indicate where such information or documents may be obtained.

7. The term "identify" means, with respect to a natural person, to set forth his or her full name, present or last known business address, the name of that person's employer and a description of the job responsibilities of such person.

8. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship) to set forth its full name, address, legal form (e.g. corporation, partnership, etc.) organization, if any, and a brief description of its business.

9. The term "identify" means, with respect to a document, to provide its customary business description, its date, its number if any (invoice or purchase order number), the identity of the author, addressor, addressee and/or recipient, and the substance of the subject matter.

10. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substances or pollutants or contaminants.

11. As used here, "document" and "documents" shall include writings of any kind, formal or informal, whether or not wholly or partially in handwriting (including by the way of illustration and not by way of limitation), any invoice, receipt, endorsement, check, bank draft, cancelled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memorandum of telephone and other conversations including meetings, agreements, and the like, diary, calendar, desk pad, scrap book, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, report, notice, message, analysis, comparison, graph, chart, interoffice or intraoffice communications, photostat or other copy of any documents, microfilm or other film record, any photograph, sound recording on any type of device, any punch card, disc, or disc pack; and any tape or other type of memory generally associated with computers and data processing (together with the programming instructions and other written material necessary to use such punch card, disc or disc pack, tape or other type of memory and together with printouts of such punch card, disc or disc pack, video tape or other type of memory); including (a) every copy of each document which is not an exact duplicate of a document which is produced, (b) every copy which has any writing, figure or notation, annotation or the like of it, (c) drafts, (d) attachments to or enclosures with any documents and (e) every document referred to in any other document.

12. "And" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Information Requests any information which might otherwise be construed to be outside their scope.

REQUESTS

1. Identify all persons consulted in the preparation of the answers to these Information Requests.
2. Identify all documents consulted, examined, or referred to in the preparation of the answers to these Requests and provide copies of all such documents.
3. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any Information Request or who may be able to provide additional responsive documents, identify such persons.
4. Did you ever use, purchase, store, treat, dispose, transport or otherwise handle trichloroethylene (TCE), 1,1,1-trichloroethane (TCA) or any other solvents containing volatile organic compounds? If the answer to the preceding question is anything but an unqualified "no", identify:
 - a) The chemical composition, characteristics, physical state (e.g., solid, liquid) of each such substance;
 - b) Who supplied you with such substances;
 - c) How such substances were used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you;
 - d) When such substances were used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you;
 - e) Where such substances were used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you; and
 - f) The quantity of such substances used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you.
5. Was there ever a time in which results of tests done on the water from the Walerko property indicated the presence of TCE and/or TCA? If the answer to the preceding question is anything but an unqualified "no", identify:
 - a) The date on which such tests were done;

- b) The name of the person who performed the test(s);
 - c) The results of the test(s);
 - d) What investigative actions were undertaken to determine the source of the TCE and/or TCA?
 - e) What conclusions were reached based upon the results of such investigations; and
 - f) What other actions were taken by you in response to such test results?
6. Identify all persons having knowledge or information about the generation, transportation, treatment, disposal or other handling of TCE, TCA or any other solvents which contain volatile organic compounds, whether product or waste, by you, your contractors, or by prior owners and/or operators of the Walerko property.
7. Identify the acts or omissions of any persons, other than your employees, contractors, or agents, that may have caused the release of TCE, TCA or any other solvents which contain volatile organic compounds at or near the Walerko property.
8. Describe the nature of your activities or business with respect to purchasing, receiving, processing, storing, treating, disposing, or otherwise handling TCE, TCA and/or other solvents containing volatile organic compounds.
9. Identify all leaks, spills, or releases into the environment of any TCE, TCA, or any other solvents containing volatile organic compounds that have occurred at or near the Walerko property. In addition, identify:
- a) When such releases occurred;
 - b) How the releases occurred;
 - c) The amount of each hazardous substances, pollutants, or contaminants so released;
 - d) Where such releases occurred;
 - e) Any and all activities undertaken in response to each such release or threatened release, including the notification of any agencies or governmental units about the release,
 - f) Any and all investigations of the circumstances, nature, extent or location of each release or threatened release

including, the results of any soil, water (ground and surface), or air testing undertaken; and

g) All persons with information relating to these releases.

10. Was there ever a spill, leak, release or discharge of TCE, TCA or any other solvents containing volatile organic compounds into any subsurface disposal system or floor drain inside or under the Walerko building? If the answer to the preceding question is anything but an unqualified "no", identify:

a) Where the disposal system or floor drains were located;

b) When the disposal system or floor drains were installed;

c) Whether the disposal system or floor drains were connected to pipes;

d) Where such pipes were located and emptied;

e) When such pipes were installed;

f) How and when such pipes were replaced, or repaired; and

g) Whether such pipes ever leaked or in any way released hazardous materials into the environment.

11. Has soil ever been excavated or removed from the Walerko property? Unless the answer to the preceding question is anything besides an unequivocal "no", identify:

a) Amount of soil excavated;

b) Location of excavation;

c) Manner and place of disposal and/or storage of excavated soil;

d) Dates of soil excavation;

e) Identity of persons who excavated or removed the soil;

f) Reason for soil excavation;

g) Whether the excavation or removed soil contained hazardous materials and why the soil contained such materials;

h) All analyses or tests and results of analyses of the soil that was removed; and

i) All persons, including contractors, with information about (a) through (h) of this request.

12. Identify all liability insurance policies held by Respondent from 1970 to 1989. In identifying such policies, state the name and address of each insurer and of the insured, the amount of coverage under each policy, the commencement and expiration dates for each policy, whether or not the policy contains a "pollution exclusion" clause, and whether the policy covers or excludes sudden, nonsudden or both types of accidents. In lieu of providing this information, you may submit complete copies of all relevant insurance policies.

13. Provide copies of all income tax returns sent to the Federal Internal Revenue Service in the last three years.

14. Identify all of Respondent's current assets and liabilities and the person(s) who currently own or are responsible for such assets and liabilities.

ADDITIONAL REQUESTS

- a. Did you receive the information request that was sent to you in March 1990?
- b. Did you receive the information request that was sent to you in May 1990?
- c. Identify the persons for whom Chris Ogar performed duties at Walerko Tool and Engineering Corporation in March 1990?
- d. Identify the persons for whom Marlene Yoder performed duties at Walerko Tool and Engineering Corporation in May 1990?